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ART. IX.—*Chief Justice Marshall.*

A Discourse upon the Life, Character and Services of the Hon. John Marshall, LL.D., Chief Justice of the United States of America, pronounced on the fifteenth day of October, at the Request of the Suffolk Bar. By JOSEPH STORY, LL.D. and published at their request. Boston, James Munroe & Co. 1835.

THIS beautiful work is entitled to a very high rank among compositions of its class. For the combination of truth, eloquence, and the fine expression of natural feeling, we should be at a loss to point to its equal. The introductory remarks are simple, dignified and elevating ; and they breathe that lively sensibility to moral greatness without which no one could do justice to the subject of the discourse. The narrative portion is written in a clear and flowing style, with rather more of a tendency to wander aside into episodical digressions, than a severe criticism might approve, though perhaps, it would not be possible to give a correct view of the life of Chief Justice Marshall without including a good deal of contemporaneous history ; his own share in the leading events having been so prominent, and he having been so conspicuous a member of one of the two great parties which divided the country. It is marked by a copiousness and minuteness of detail, arising both from intimate knowledge of the eminent man, whom the discourse commemorates, and a thorough acquaintance with the general and political history of the country, during the period of his active services. Many of the facts and statements are such as could have been derived from no other source than the lips of Chief Justice Marshall himself, and we may esteem ourselves fortunate that the duty of writing his Eulogy has fallen to the lot of one, who, for so many years, enjoyed his confidence so fully, and who had such ample opportunities of becoming familiar with the inmost workings of his mind, and the least obvious manifestations of his character. But the most valuable part of the Eulogy is that, in which the commanding moral and intellectual lineaments of Chief Justice Marshall are so justly and glowingly depicted, and the ruling principles of his life are educated from the events of his biography. In the narrative of facts, one accomplished writer will not vary essen-

tially from another ; but in the analysis of character, in giving us the form and feature of the inner man, in tracing minute lines of distinction, in setting forth those things in which the individual under consideration differs from others, and which constitute his identity, it is here that a leading mind manifests itself most clearly. Every one who recognises the moral beauty of great powers devoted to good ends, will feel grateful to Mr. Justice Story, for the life-like hues in which he has painted his revered associate and friend. The venerable form of that great and good man, whose character, so wonderfully tempered and so exquisitely poised, soars above the reach of common epithets, rises up before us as we read ; we catch the glance of that wisdom-beaming eye, and hear the tones of that voice, upon which men were wont to hang, as upon the responses of an oracle. The author pours out his soul with that fervor and glow, which spring from strong personal attachment and deep veneration for the man, as well as the magistrate ; and yet there is the discriminating touch of one who loves the truth too well, to sacrifice it even at the altar of friendship. It is a highly honest Eulogy, with none of those rhetorical flourishes which are the fruit of literary vanity, and none of those cold, antithetical phrases, which, as we read them, suggest the impression, that the writer kept them ready made in his brain, to make use of on the first occasion he could bring them to a good market. It is plain that the subject and nothing else, was in the author's mind, when he wrote, and that his only consideration was, how he should do justice to that. With the exception of the historical digressions, there is hardly a sentence which could be taken out and inserted in the Eulogy of another man ; and there are very few productions of this sort, of which the same remark can be made. In his comprehensive grasp of the whole character, while gathering up the individual traits that illustrate it, there is something that reminds us of the inimitable portraits of Clarendon. While we admire the skill and fulness of the delineation, merely as a literary effort, we admire no less the courage and heartiness, with which the writer speaks out, and tells us that he loved his friend. We use the word, courage, advisedly, for in these days, when the *nil admirari* doctrine is fashionable, and weakness is esteemed so large an ingredient in enthusiasm, it requires no little courage to let the liquid heart flow out with such self-forgetting fulness. No paltry considerations of official dignity have fro-

zen the genial current of his soul, and checked the strong expression of natural feeling. Young writers, who are most in danger of doing injustice to themselves by morbid self-restraint, will do well to observe how much is gained in point of true power, by a generous abandonment of ones self to a fine impulse, and how necessary it is for an author to forget himself in his subject, in order to write truly well.

Knowing this discourse to be the production of a most learned lawyer, and a highly distinguished judicial writer, we cannot but be struck with observing how little the author's mind has been cramped and narrowed by professional studies, and how much of energy, freedom and grace there is in its movements. We perceive no marks of a bigoted and absorbing devotion to one science, which regards poetry and ornamental learning as mere surplusage ; *nihil hoc ad edictum Prætoris* ; but the reflections and allusions reveal a mind enriched by tributes from every department of literature. The style, though it wants that fastidious finish, which can only be attained by an exclusive attention to scholar-like pursuits, and by selecting words with that slow deliberation with which a painter chooses his colors, has nothing of the dryness and huskiness of the mere lawyer ; on the contrary, it has a richness and fulness, which show a familiarity with the best models of English writing, and a literary spirit, which has lived and flourished in the close air of legal studies, and in spite of the austere frowns of jurisprudence. We notice this with much pleasure, and are glad that we have among us, so striking a refutation of the old maxim, that a man who would be a lawyer, must cease to be a scholar, and (as Mr. Fearne is said to have done, though we question the truth of the tradition,) throw the poets and classics into the fire. We are persuaded, not only that literature and law are not incompatible, but, that other things being alike, he who is the better scholar will be the better lawyer. Nay more, we believe that none but a good scholar, can be a first rate lawyer ; and that the highest attainments in jurisprudence can only be made by a mind which is expanded, fertilized and invigorated by general reading and liberal studies.

Our intention in the present article is, not so much to enter into a critical analysis of a production, which must be familiar to most of our readers, and to which the high reputation, both of its author and of its subject, must secure an extensive circulation, and a permanent place in our literature, as to avail our-

selves of its assistance in a few remarks, which we propose to offer upon the character and services of Chief Justice Marshall. We approach the task with diffidence, and a consciousness of our inability to do justice to the theme. Though it seems difficult to say too much, yet any thing like extravagance or exaggeration would be peculiarly unworthy of one so remarkable for his simplicity and truth, who was as much above concealing his own nature, as affecting one which did not belong to him. The rough strokes and glaring colors in which the characters of the vulgar herd of great men, so called, may be struck off, cannot express the serene equilibrium of his virtues, and the exquisite temper of his mind. His greatness was unpretending, and little likely to impress a careless observer, or to be felt by a vulgar minded man ; and we may safely state it as a general principle, that the tribute of admiration which a man would pay to Chief Justice Marshall, would be in proportion to his own moral and intellectual nature, and that his character could only be fully appreciated by one as wise, as good, and as great as himself.

One is often led to remark upon the peculiar adaptation, which certain individuals manifest for the stations which, in the course of events, they are called upon to fill ; an adaptation, in many cases, so very striking, as to press upon us the conviction that Providence, from time to time, raises up and specially endows men, for the performance of grave and high duties, making them important instruments in the promotion of its plans, for the improvement and happiness of the race. The most superficial observer, for instance, must have been struck with the admirable harmony between the mind and character of Washington, and the arduous tasks assigned to him to do ; and it is hard for a serious, not to say religious mind, to escape from the feeling that he was a peculiar gift of Heaven, reared and trained to be the deliverer of his people ; fitted “ to perform justly, skilfully, and magnanimously, all the offices both public and private, of war and peace.” In the delicate and trying situations in which he was placed, how easy it is to see, that a change even in the proportions of the elements which make up his matchless character, would often have made him unequal to the exigency ; and who could have weathered the storm, had he been obliged to quit the helm ? The same extraordinary adaptation is remarkable in the case of a man, in whose nature there was more of alloy, than in that of the spot-

less commander-in-chief, and who entered into the political disputes of his day, with so much warmth as to make it yet hardly time enough for full justice to be done to his services and his motives ; we mean Alexander Hamilton. He appeared to have been expressly created to relieve the country from those desperate financial embarrassments, before which patriotism itself seemed to fold its hands in mute despair. His practical and theoretical skill, his self-confidence, his power of forming the largest plans, and at the same time of grasping the minutest details, and his comprehensive genius, bold even to daring, were necessary to set the new government a going, and give it a fair trial of its powers. A political arithmetician, such a one as in ordinary times would make a very good Chancellor of the Exchequer, or Chairman of the committee of Ways and Means, would have been unequal to the Herculean task. We wanted a creative mind, rich in resources, fertile in expedients, that knew the hidden springs and sources of wealth, and whose magic voice could call it from the earth, the sea, the mountain, the forest and the stream ; and such a one was found in Hamilton.

The late Chief Justice of the United States, in like manner, seemed to be so exactly adapted to his high station, that one could hardly help thinking, either that the office was made for the man, or the man for the office. Its duties, always arduous, were peculiarly so at the time when he assumed them, his own original and comprehensive genius having erected many of those guides and landmarks, by which the steps of his successors will be directed, and their labors and responsibility lessened. It was easy to foresee that questions would arise, in which little assistance could be derived from municipal law, the decisions of courts or the dicta of judges ; but in which truth was to be elaborated by the severest exercises of reason, and the most patient analysis of logic. To be learned merely, was not enough, for learning, however accurate or profound, would furnish no guiding clue in those new and untried paths of investigation, in which progress could be made only by the self-derived and self-sustained energies of an intellectual pioneer. The constitution also devolved upon the Supreme Court, duties of the most delicate and embarrassing nature. It was to sit as arbiter in questions, which, considering the great and continually increasing extent of the sphere of their influence, may be fairly esteemed the most momentous and important that

ever came before a human tribunal. It was not to settle merely trivial disputes about lands and money, but to establish great principles of government, to expound an instrument, whose every line was pregnant with vast consequences, to check inferior tribunals, to cross the path of legislative assemblies ; and to hold aloft the even-handed scales of justice between conflicting states. Men's strongest hopes, their most deep-rooted prejudices, their most vital prepossessions were the mighty combatants that struggled in its arena. To preside over such a court, wisely and well, required an extraordinary, almost an unprecedented combination of moral and intellectual powers : a mind clear-sighted and original, patient in the discovery and luminous in the exposition of truth ; a dignity and elevation of character to give weight to every opinion ; and a moral courage, to speak out boldly the convictions of the understanding, without fear or favor. The mere force of authority could not have established the decrees of such a tribunal, unless they had been aided by the irresistible championship of truth, and sustained by arguments extorting the assent even of prejudiced minds. It was necessary too, that there should be the most entire confidence in the purity of motives of its presiding magistrate, and in his single-hearted devotedness to justice ; and the suspicion even of a stain would have been fatal to the influence of the most gifted individual, and cast “ominous conjecture” over all his judicial acts. Nor would a violent political partizan have met the reasonable expectations of the public ; nor would the decisions of such a man, however learned, eloquent and well reasoned, have been received with silent deference ; in those cases in which the political feelings of the people were concerned, and there are few questions of general interest in our country, which do not become party questions. When we also bear in mind how important a part of the government, the Supreme Court is made by the constitution, and how much its success, and consequently the prosperity of the country were to depend upon the manner in which it discharged its functions, and how much too, the character of the Court would partake of the character of its head, we shall be prepared to feel the vast, the overwhelming weight of the responsibility assumed by him, who, at that early period of our history, consented to be clothed with the dignity of Chief Justice of the United States.

That this responsibility was deeply felt by Chief Jus-

tice Marshall, is an unavoidable inference from his modesty and his conscientiousness, though the favor with which the appointment was received by the country shewed that the community, which rarely forms a wrong estimate of the powers and gifts of a public man, was aware of his eminent qualifications for the office, and expected that the man would not be inferior to the place. He thus entered upon his judicial life with no prejudices against him, but on the contrary with impressions in his favor; and this confidence suffered no diminution, but if possible, was continually on the increase, from that moment to the hour of his death.

The primitive and elemental structure of his mind made him peculiarly fit for the station of a judge. It was calm, contemplative, and profound. He was patient in the investigation of a subject, and able to keep his judgment in suspense, till the question before him had been thoroughly examined in all its bearings, and every argument deliberately considered. He had that strong common sense which lies at the foundation of intellectual greatness. He was, to an extraordinary degree, free from those infirmities of mind which beget distrust in the conclusions arrived at. Sophistry could not darken, nor brilliant rhetoric dazzle his understanding. His vigorous logic unravelled the most tangled web, which a metaphysical advocate could weave, and stripped every question of all those adventitious appendages which were intended to disguise its real shape and feature. He had, in great perfection, that power, which Sir Isaac Newton said was the only thing in which he differed from other men; the ability to keep a subject constantly in his mind, and contemplate it steadily, and apart from every thing else, till the dawning truth by degrees brightened into the perfect day. This calmness and soberness of mind are only found in men of a high order of greatness. A restless mind may be acute and ingenious, but can hardly be profound or even safe. Mr. Coleridge said, that he had known very few men who loved the truth for the truth's sake; if he had known Chief Justice Marshall, he would have included him in the select list. He loved the truth for its own sake, and because his mind could find satisfaction and repose in nothing else. Lord Bacon, in one of those pregnant sentences, which condense a world of thought into a few words, remarks, that "the light of the understanding is not a dry and pure light; but, drenched in the will and the affections; and the intellect forms

the sciences accordingly. What men most desire to be true, they are most inclined to believe." Chief Justice Marshall was a most striking exception to this general rule. Pure reason seemed to be the element in which his mind lived and moved, and the will and the affections offered no disturbing impulse. His was not one of those minds, which suddenly form an opinion and then cast about to find reasons to support it ; on the contrary, he kept himself open to conviction, and came to a conclusion only because he could not help it, and the arguments he used to convince others were precisely those which he had previously used to convince himself.

He was not, in any sense of the word, a learned man. " It is due to truth," says Mr. Justice Story, " as well as to his memory, to declare that his judicial learning was not equal to that of many of the great masters in the profession, living or dead, at home or abroad. He yielded at once, to their superiority of knowledge, as well in the modern as in the ancient law. He adopted the notion of Lord Bacon, that " studies serve for delight, for ornament and for ability, in the judgment and disposition of business." In his purely legal opinions, we do not find that exhausting fulness of discussion, and that copious flood of illustrations from every department of jurisprudence, which characterise those of his distinguished eulogist. Nor had he that rich and ripe scholarship, which gives such grace to the judicial style of Lord Stowell, whose eloquent lips flow with the sweetest honey of the Attic bee. The original and meditative cast of his mind, made him more inclined to reproduce a subject in a new form, and stamped with his own intellectual image, than to seek foreign aid in the pursuit of truth, and to adopt at second hand the impressions of another intellect. The natural tendency of his understanding to grow by observation and reflection, rather than by study, had been increased by the circumstances of his life. The time which most men, who are destined to the learned professions, pass over their books, he, in obedience to the call of patriotic duty, had spent in vigorous action, and although his mind and character were greatly developed by the crowded life which he lived, it certainly was not favorable to the acquisition of learned lore of any kind. Instead of passing from school to college, from college to a lawyer's office, and after admission to the bar, sitting quietly among his books a dozen years or more, with few calls of business to interrupt the even tenor of his

studies and speculations, we find him, after an irregular and desultory elementary education, at the very dawn of manhood, throwing aside his *Blackstone*, buckling on his knapsack, and plunging into the dangers and excitements of our revolutionary struggle. From that time he is constantly sustaining active duties, either of peace or war, and is never the solitary student. He is in the Legislature of his own State, in Congress, or absent in a foreign country on a diplomatic mission. He is the confidential friend of Washington, and the decided, though not the violent defender of his administration; he lives in stirring times, when every conspicuous man is called upon to take a part in political measures, and maintain his opinions with all his might. He was made by the force of circumstances, a “public creature,” to borrow Mr. Burke’s expression in regard to his son, and however much his wishes might have inclined him to the calm retreats of private life, he was too disinterested and too conscientious not to make the sacrifice at the bidding of duty, and prefer the serving of his country to the gratification of his own tastes.

As we have hinted above, we think that the whole course of his life was eminently favorable to the growth of his mind and character. In the highest of all forms of education, the education of circumstances, he was fortunate to an uncommon degree. Providence assigns to every human soul its own peculiar method of culture, and one mind starves in the midst of what is intellectual abundance to another. Some men are meant to study books, and others, things; and Chief Justice Marshall was one of the latter class. His mind drew its natural aliment from observation and reflection, and the various responsible offices which he sustained supplied it with constant food. He was enabled to bring his opinions to the test of experience, and lay strongly the foundations of his intellectual being. His reasoning powers were trained and strengthened, his sagacity was sharpened, the lines of discrimination were more nicely drawn, his masculine logic was wielded with more efficiency and skill, and his understanding acquired that force which springs from symmetrical development. The extensive field of his observation helped him to acquire that rare and inestimable gift, which he had in great perfection, and which is nine parts in ten in the composition of a wise man, the power of seeing things exactly as they are, without confusion, distortion or dis-coloring. A familiar acquaintance with practical life and with

the sayings and doings of men under the excitement of hopes, fears and wishes, is an indispensable ingredient in the education of the mind that is to exercise an important influence over others. The advice which a great living poet gives to his bookish friend,

“ Come forth into the light of things,”

is as important to be followed by those who are to sustain the great duties of life, as by the bard who desires to translate the language of Nature into the language of men. We cannot therefore regret the hours which Chief Justice Marshall spent in the camp and the senate, or wish that he had rather devoted them to solitary communing with the sages of the law. The wisdom which the former course gave him, was of more importance to his country, than the learning with which the latter might have furnished him.

When we say that he was not a learned man, we are speaking relatively not absolutely. His learning did not bear the same proportion to his original powers, as is generally the case with men who devote themselves successfully to a learned profession ; but there was no deficiency in it, on the contrary an ample store. He was incapable of discussing any subject superficially, and when it was necessary to investigate it by the aid of books, he would do it thoroughly. But when his mind was made up he would pursue the inquiry no further. Hence we find in his opinions, no superfluous learning, none of that affluence of legal lore, which shews a mind brimfull of and running over with it. His logical and discriminating understanding enabled him to grasp the essence of a case, and to disengage from a crowd of authorities, the ruling principles of the law applicable to it. He studied with a definite object in view, and because he wished to apply its results to immediate use, and not because he had a predominating love for the employment. He read for the purpose of exercising his reflection, rather than storing his memory, and was more familiar with principles than cases. We should naturally infer from the character of his intellect, that he would be desirous of having every question that came before him, thoroughly argued, and that his powers of analysis and intuitive perception of truth, would give him the mastery over even an unfamiliar subject, when the opposite authorities and conflicting decisions were spread before him. On this point, the testimony of Mr. Justice Story is full and explicit.

“He was solicitous to hear arguments ; and not to decide causes without them. And no Judge ever profited more by them. No matter, whether the subject was new or old ; familiar to his thoughts, or remote from them ; buried under a mass of obsolete learning, or developed for the first time yesterday ; whatever was its nature, he courted argument, nay, he demanded it. It was matter of surprise to see, how easily he grasped the leading principles of a case, and cleared it of all its accidental incumbrances ; how readily he evolved the true points of the controversy, even when it was manifest, that he never before had caught even a glimpse of the learning, upon which it depended. He seized, as it were by intuition, the very spirit of juridical doctrines, though cased up in the armor of centuries ; and he discussed authorities, as if the very minds of the Judges themselves stood disembodied before him.” — p. 70.

His opinions are remarkable for addressing themselves rather to the common than the legal mind. They seem like the reasonings of a powerful understanding, applying the leading principles which lie at the foundation of municipal law, to the solution of the particular problem under consideration, and as a general rule, they can be followed and understood by any strong minded man whether in the profession or not. Those who take pleasure in such speculations, and are interested in observing by what different processes, two superior minds arrive at the same results, will be gratified in reading the opinions of Chief Justice Marshall and Mr. Justice Story in the Dartmouth College Case, reported in the fourth volume of Wheaton’s Reports.

The character of his mind, its patience, its calmness, its power of analysis and generalization, and the steadiness of its movements, made him peculiarly fitted for the exposition of constitutional law. Whatever rank may be assigned to him as a common lawyer, in this department he stands confessedly alone and without a rival. Indeed, he cannot with so much propriety be said to have mastered constitutional law, as to have created it. He found it in its rudiments, and left it a beautiful and matured system, bearing on every part the impress of his own commanding intellect. He was in the vigor of manhood at the formation of the constitution, and one of the ablest advocates of its adoption in his native state, and his desire to vindicate it from the objections urged against by its opponents, no less than a conscientious love of truth, made him study it profoundly. And as he understood it well, so he valued it deeply, and he pressed its acceptance with that unbought

energy and power, which nothing but affection could minister. His convictions of its excellence increased with his years, and when he was called upon to expound it in his judicial capacity, he approached the task with the most devout wish to give to every line its true force, and to interpret it in such a manner as to secure to his fellow-citizens, every advantage intended by its founders. His constitutional opinions bear the stamp of deep meditation and the most pains-taking search after the truth. Every word seems to have been pondered before it was written, and the meaning of every sentence deliberately weighed. Not a position is laid down, till the force of argument could no further go, and every conclusion follows irresistibly from the premises. This single-minded devotion to truth was seconded by unexampled powers of analysis, interpretation and reasoning. His logic was of the most searching kind, and detected sophistry, however ingenious, with unerring instinct. He was equally acute in anticipating and meeting objections, and clear in the exposition of his own views. His argument is indeed so clear and transparent, that one is apt at first to underrate its strength. His manner of reasoning is very strict and compact, and his constitutional opinions are an unbroken chain of inferences and positions, with but little help from analogy. They are close-woven and impenetrable as iron net-work. They are so complete, that nothing could be added to or taken from them, without disadvantage. The premises may be denied, and that is the only way in which they can be answered, for no flaw can be found in the reasoning, and the conclusion, however remote, is inevitable. His opinions, apart from their value as expositions of an instrument, which is the highest law of the land, might be advantageously studied as models of clear and profound investigation, and of the application of vigorous logic to the elucidation of truth. When we regard their originality, their depth, their clearness, and their adamantine strength, we look upon them as among the highest efforts of the human mind. We behold in them, the animating spectacle of a great intellect grappling with a great subject, not from love of display, or the praise of men, but from the highest of motives and for the noblest of ends. Here, he was thrown back upon himself, to make precedents without precedents to aid him, and without authorities, to establish rules and principles, which were to exert an influence upon increasing multitudes of men, hitherto unknown to the decisions of courts of justice.

His way was a dim and perilous one, and he had no lamp to his feet but the inward light of reason, which is the brightest “effluence of essence increase.” He was to launch boldly upon an untried sea of speculation, with no guides but those primal principles of truth and justice, which “shine aloft like stars.”

The admiration which one feels for the intellectual powers displayed by Chief Justice Marshall in his expositions of the constitution, is not to be confounded with assent to the results to which he came. It is well known that many distinguished men have differed, and still differ from him in his views of constitutional law, and that his learned associates upon the bench have not, uniformly, all gone along with him. He loved the constitution and he loved the union, and the desire of preserving and maintaining both, was uppermost in his mind. He was in favor of interpreting the constitution largely and generously, and giving to it that liberal construction which would leave no line, or letter inoperative, and which would, by its greater efficiency, draw more closely the cords which bind us together. He was not a States-rights man, as that word is commonly understood, and he was evidently more fearful of the centrifugal than the centripetal force in our system. He was consistent in his political opinions, and made no disguise of them. His views of constitutional law, whether right or wrong, have received the approbation of a large majority both of the profession and the community at large.

In looking back upon the extent of his labors in this department, and recollecting with what patient intellectual toil, the simplest constitutional opinion must be elaborated, “we are lost in admiration at the strength and stretch of the human understanding.”* We are struck not only with the superiority of his decisions, when considered separately, but with their unity when combined. They constitute nearly a perfect system of constitutional law, as almost every constitutional question, requiring a judicial decision, came before the court, during the period in which he presided over it. An analytical examination of these opinions does not form a part of our plan; indeed it would not be possible to include it within the limits of an article. It is an appropriate subject for a volume, and a most valuable one might be made out of it, equally important

* Mr. Justice Buller, speaking of Lord Mansfield in *Lickbarrow v. Mason*, 2 Term R. 42.

and interesting to the statesman, the patriot, and the constitutional lawyer, in which full justice might be done, not only to their high rank as productions of the human mind, but to the indirect influence exerted by them, in giving stability to the government and permanence to the Union. We know of no one better qualified for the task, than he, who in this Eulogy has shewn so perfect an acquaintance with the mind and character of Chief Justice Marshall, and in his Commentaries on the Constitution, has displayed so clear an understanding of that instrument and so minute a knowledge of its history. May we venture to hope that he may be induced to undertake a work, which he could do so well, and for which the country and the profession would be alike so grateful to him?

It was fortunate for Chief Justice Marshall's own fame, as well as for the happiness and prosperity of his country, that he went upon the bench of the Supreme Court at such a period, and remained upon it so long, as made it necessary for the most prominent constitutional questions to be subjected to his examination and decision. We perceive the same coincidence between his powers and his opportunities, which strikes the reader of the history of English law, in the case of Lord Mansfield. This great man was made Chief Justice of the King's Bench at a time when the commercial operations of Great Britain were rapidly extending themselves, and it was a matter of necessity that her meagre commercial code should be expanded, to meet its new requisitions, by the principles of natural equity flowing from a mind of large views and comprehensive grasp, and by the incorporation of materials borrowed from foreign sources. Lord Mansfield, from his vigorous and original mind, and his acquaintance with civil and continental law, was precisely calculated for this duty, so that he was enabled almost to create the commercial law of modern England, sometimes drawing from the pure sources of justice in his own breast, at others, silently interweaving with the common law, rules and principles drawn from Roman and European jurisprudence, which the exclusive spirit of Westminster Hall would have rejected, had they been offered with their origin upon their front. In like manner, had Chief Justice Marshall gone upon the bench a quarter of a century later, his own fame must have suffered, as he would not have had it in his power to exercise his faculties so much in that line of discussion in which he shone so preëminent. He would have been an admirable

judge, would have ennobled and dignified his elevated station ; his country would have honored him while living and mourned him when dead ; but we should never have known the extent of his powers. To constitute greatness, there must be not only a great man, but great opportunities.

The moral constitution of Chief Justice Marshall was in perfect harmony with his intellectual nature. In this respect, he was one of those rare beings that seem to be sent among men from time to time, to keep alive our faith in humanity. He had as little alloy as ever entered into the composition of a human creature. From the very first, he seemed to do nothing wrong, and to leave nothing undone which it was right for him to do. He wore the yoke of duty, without being conscious, apparently, of its weight, and seemed to find pleasure in those toils and self-sacrifices, to which most men bring themselves, only by dint of severe struggle. He was never betrayed by the exuberance of his temperament and the warmth of his passions, into those errors which wise men pardon, while they lament, and during the course of his long life, he had nothing to look back upon with regret, or to wish forgotten by others. "He needed not the smart of guilt to make him virtuous, nor the regret of folly to make him wise." The qualities of his character were so admirably tempered, and with so happy a mixture of the moving and controlling principles, that he rose at once, and spontaneously, into that moral elevation, to which men commonly attain only by the refining exercises of suffering, and by perpetual self-victories. From the moment that he assumed the office and functions of manhood, he was an object of peculiar interest to all discerning persons. It was plain that here was a man of stern virtue, of uncompromising integrity, who had a natural affinity for every thing honorable and of good report, and upon whose character, any expectations might be rested with unlimited confidence. That John Marshall could ever be the sordid slave of money, the devotee of vulgar ambition, the time-serving sycophant, the mercenary politician, selling his gifts in the market-place, the treacherous enemy, the faithless friend, no more entered into the minds of men, than that the fiery wheels of the sun would roll back in their course, or the streams wind their way from the ocean to the mountain-tops. This purity and strength of moral nature, gave him an influence which talents alone, however eminent, could not have ensured, and which, (as it is a rule without ex-

ception) is one of the most convincing proofs of the existence of a moral sense among men. It bound his friends to him with links of steel, crowning their regard with that reposing confidence which is never granted to men of no moral nerve, however rich in accomplishments, sweet in disposition, or attractive in manners. It tempered the opposition of those who differed from him in opinion, with high personal consideration. It gave him a rich harvest of opportunities, at a period when most men are in the midst of aimless efforts and crude fancies, abridging to a span the season of promise, so thickly did his duties crowd upon him, so soon did the fruits take the place of the blossoms.

How remarkably his moral organization adapted him for a high judicial station, is evident to any one who remembers how much a man's character affects the manner in which his opinions are received, and how powerful it is, either as an ally or an enemy to his mind. He went upon the bench at an age when the impetuous blood of youth has cooled in the veins, and the conduct and conversation of men, not totally abandoned, are varnished over with an outward show of decencies and gravities, which is hardly distinguished by superficial observers, from the form of authentic virtue. Men, moreover, of a glowing and exuberant nature, must work themselves clear, by a sort of fermentation, in which the fiery and fervid elements pass off, and the pure and strong ones remain, and of such, the finest and noblest beings are often made; but most men have either too little philosophy, or too little charity to understand and feel all this. In a model judge, a judicial beau-idéal, we want no superficial, skin-deep goodness, but a moral system, sound to the very core, and a character so happily moulded, as to begin right, and not merely come right. Mankind, and perhaps it is best that it should be so, respect most highly, him who has had nothing to alter, and nothing to repent, who has always thought, spoken and acted as he ought to have done. There are reptiles in human limbs, whom no lapse of time can persuade to bury in oblivion, the weakness, the error, or the sin of a fellow-creature, and whose delight it is, to drag even from the dread repose of the grave, the forgotten frailties of the good, the wise and the just. Against the attacks of such creatures, Chief Justice Marshall was cased in an armor of proof. Though he had lived in the public eye, from his very boyhood, his life defied the scrutinizing glance of envy. It was a pure

and cloudless summer's day ; a strain of music, perfect to the close, with not one rude note to grate upon the ear. He had laid his first fruits upon the altar of duty, and his last breath was spent in its service. It is not too much to say that this spotless virtue enforced every opinion that he gave, and that his country felt the advantage of it, to a degree hardly to be exaggerated. It bade the murmurs of opposition, which might have swelled into a torrent-like roar, die away in faint whispers. It disposed candid men to believe that he who had always acted right, must also, of necessity, think right.

The manners of Chief Justice Marshall were marked by that unaffected dignity and simplicity, which so well become a great magistrate. That calmness which gave so much strength to his mind, imparted itself to his whole nature. His temperament was of that placid kind, which is most favorable to wisdom, and without which a man can hardly be a practical philosopher. Nothing had power to disturb his equanimity, or ruffle the smoothness of his temper. He had none of that nervous excitability, which good men often find such a "thorn in the flesh." Neither vain repetition, nor frothy verbiage, nor declamatory nonsense, (and how much of all, must have been inflicted upon his "naked ears,") ever wrung from him a peevish remark, or an irritable gesture. In his carriage and deportment was seen a mixture of dignity and sweetness ; the gravity of the judge tempered with the courtesy of the gentleman. His moderation was known in all things. He was a stranger to the extremes of excitement and depression, and the even flow of his cheerfulness betokened a perpetual sunshine of the breast. His conversation never dazzled by its brilliancy, or eloquence, or exuberance, but was characterized by quiet good sense, more than any thing else. He was never engrossing or obtrusive, and rather required to be drawn out. He was no social tyrant, trampling on opponents, with that overbearing intolerance which so often disgraces men who are conspicuous for their talents and station. Many who met him, were disappointed in not finding in his conversation, those striking qualities which they had anticipated ; but no one left his presence, without carrying away the most gratifying recollection of his kindness, his sincerity and his entire want of pretension. His simplicity was indeed proverbial. It seemed sometimes to puzzle and disconcert those who saw him for the first time, so unprepared were they to find so great a man, so very plain and unpretending.

They expected to see the Chief Justice of the United States, keeping up a sort of official state, even in private. But he was above this poor affectation, which is generally the disguise of conscious weakness, fearful of detection. He never desired to pass for any other than what he really was, and did not wish that the Chief Justice should receive a consideration which was not due to John Marshall. No man ever bore his honors more meekly. His dignity was not of that flimsy and unsubstantial texture, which cannot bear a near approach or a rude touch. He had none of that uneasy self-consciousness, which is ever on the watch to see that every one pays the exact amount of deference which is due. He sympathized readily and cordially with others, and was warm and constant in his affections. In particular, he felt a lively interest in the young, and seemed to grow young himself, in watching the glowing hues which paint life's "pleasant morning." He had nothing of that austerity and moroseness which, in old age, sometimes blight the genial charities of the heart. He did not feel cut off and apart from the generations that came after him, nor think that the glory would pass away from the earth, with that to which he belonged. As his youth was tempered with the wisdom and serenity of age, so his age was graced with much of that unworn freshness of feeling, which is so lovely in youth. Not only his early attachments, but his early tastes, even in amusements, were retained by him unimpaired, and he might be seen, in the very last years of his life, engaged with the keen relish of boyhood, in a game of quoits. His fondness for this exercise is one of those characteristic traits which ought to be preserved, and which mark the manly simplicity of his character and his disdain of affectation. If there be any one who thinks this an undignified amusement for a Chief Justice, we will remind him of the story of the Spartan king, who being engaged in some cheerful sport, and observing a solemn coxcomb approaching, remarked to his companions: "My friends, we must be grave, for here comes a fool."

There are some interesting points in the private and domestic character of Chief Justice Marshall, which are given with so much beauty and feeling, by Mr. Justice Story, that we cannot deny ourselves the pleasure of transcribing the passages in question.

"He was a man of deep sensibility and tenderness; nay, he was an enthusiast in regard to the domestic virtues. He was en-

dowed by nature with a temper of great susceptibility, easily excited, and warm, when roused. But it had been so schooled by discipline, or rather so moulded and chastened by his affections, that it seemed in gentleness, like the distilling dews of evening. It had been so long accustomed to flow in channels, where its sole delight was to give or secure happiness to others, that no one would have believed, that it could ever have been precipitate or sudden in its movements. In truth, there was, to the very close of his life, a romantic chivalry in his feelings, which, though rarely displayed, except in the circle of his most intimate friends, would there pour out itself with the most touching tenderness. In this confidential intercourse, when his soul sought solace from the sympathy of other minds, he would dissolve in tears at the recollection of some buried hope, or lost happiness. He would break out into strains of almost divine eloquence, while he pointed out the scenes of former joys, or recalled the memory of other days, as he brought up their images from the dimness and distance of forgotten years, and showed you at once the depth, with which he could feel, and the lower depths, in which he could bury his own closest, dearest, noblest emotions. After all, whatever may be his fame in the eyes of the world, that, which, in a just sense, was his highest glory, was the purity, affectionateness, liberality, and devotedness of his domestic life. Home, home, was the scene of his real triumphs. There, he indulged himself in what he most loved, the duties and the blessings of the family circle. There, his heart had its full play ; and his social qualities, warmed, and elevated, and refined by the habitual elegancies of taste, shed around their beautiful and blended lights. There, the sunshine of his soul diffused its softened radiance, and cheered and soothed and tranquillized the passing hours.

“ May I be permitted also in this presence to allude to another trait in his character, which lets us at once into the inmost recesses of his feelings with an unerring certainty. I allude to the high value, in which he held the female sex, as the friends, the companions, and the equals of man. I do not here mean to refer to the courtesy and delicate kindness, with which he was accustomed to treat the sex ; but rather to the unaffected respect, with which he spoke of their accomplishments, their talents, their virtues, and their excellencies. The scoffs and jeers of the morose, the bitter taunts of the satirist, and the lighter ridicule of the witty, so profusely, and often so ungenerously, poured out upon transient follies or fashions, found no sympathy in his bosom. He was still farther above the common-place flatteries, by which frivolity seeks to administer aliment to personal vanity, or vice to make its approaches for baser purposes. He spoke to the sex, when present, as he spoke of them, when absent, in language of

just appeal to their understandings, their tastes, and their duties. He paid a voluntary homage to their genius, and to the beautiful productions of it, which now adorn almost every branch of literature and learning. He read those productions with a glowing gratitude. He proudly proclaimed their merits, and vindicated on all occasions their claims to the highest distinction. And he did not hesitate to assign to the great female authors of our day a rank, not inferior to that of the most gifted and polished of the other sex. But, above all, he delighted to dwell on the admirable adaptation of their minds, and sensibilities, and affections to the exalted duties assigned to them by Providence. Their superior purity, their singleness of heart, their exquisite perception of moral and religious sentiment, their maternal devotedness, their uncomplaining sacrifices, their fearlessness in duty, their buoyancy in hope, their courage in despair, their love, which triumphs most, when most pressed by dangers and difficulties; which watches the couch of sickness, and smooths the bed of death, and smiles even in the agonies of its own sufferings; — These, these were the favorite topics of his confidential conversation; and on these he expatiated with an enthusiasm, which showed them to be present in his daily meditations." — pp. 53—56.

Among the qualifications which were possessed by Chief Justice Marshall, for an office as laborious as it is responsible, we must not overlook a healthy physical organization and great soundness of constitution. Without vigor of body, there cannot be permanent vigor of mind, and great intellectual efforts require great physical energies. He was capable of uncommon exertions, both of body and mind, and his habits of exercise and temperance preserved his powers unimpaired to the last. He was very athletic in his youth, fond of field sports, and excelled in all exercises which require strength or agility. The mountain breezes filled his veins with health, and braced his frame with that robust energy, which carried him so triumphantly through the exhausting duties, alike of the camp and the forum. His arduous judicial labors he discharged with an ease which seemed unconscious of their weight. Without doubt, much of that uniformity of health which he enjoyed was due to the calmness of his moral temperament, to his pure and simple tastes, his self-command, and to his never having been, at any period of his life, the slave of wasting passions. Still, without an uncommonly favorable constitution of body, he could never have gone on, nearly to the age of fourscore, performing the duties of his high and laborious office, without the least

decay of his faculties, and with a vigor of mind which burned clear to the last. Nor is it one of the least remarkable facts about him, that his ablest opinions were written after the age of sixty, when, by the laws of the largest State in the Union, a man ceases to be qualified for a judicial office.

We have been considering Chief Justice Marshall exclusively in his judicial capacity, and have endeavored to shew how admirably the whole constitution of his nature was adapted to the place which he occupied during the last thirty-four years of his life. In doing this, we have by no means overlooked his previous career, nor been insensible to the merit displayed by him as a legislator, a diplomatist, and a statesman. Had he died at the age of forty-five, he would have left behind him a most honorable name, and been gratefully remembered by his country, as one of the most able and high-minded of her sons. But the splendor of his judicial reputation throws a shade over the other efforts of his intellect, imposing as these appear, when contemplated singly. His mind, his character and his temperament were so well calculated for the Bench, that we have preferred to consider all that he did, previous to his appointment, rather as a course of preparatory exercises to educate him for that great station to which he had received a sort of native bias, than as constituting by themselves any considerable portion of his fame. Indeed, his speeches, his arguments, and his writings were all imbued with a kind of judicial character, and in his whole course as a public man, he appeared more like a wise judge, seeking after and announcing the truth, than as a reckless partizan, who wanted to know only on what side he was to fight. His speech in the legislature of Virginia on the occasion of Mr. Jay's treaty with Great Britain, in which he maintained the constitutional right of the Executive to conclude a commercial treaty, (and which has been preserved only by tradition,) had all the characteristics and also all the effect of a judicial opinion. It caused a most important modification in the resolutions of the Assembly, which silently abandoned the constitutional objection, though it had been previously pressed with great warmth and confidence. His well known argument in the House of Representatives of the United States, in the case of Jonathan Robbins, has been preserved. It enjoys an authority almost unknown to any judicial argument. It settled the question under debate entirely at

the time, and has ever been esteemed unanswerable ; and in a point of constitutional law, it would be cited as readily, and be entitled to nearly as much weight, as any of his constitutional opinions.

Had he remained all his life at the bar, he could hardly have occupied the imposing station before his country that he now does. Eminent as he must have been in the very highest ranks of the profession, he would have had comparatively few opportunities of displaying that kind of intellectual power in which he was so richly gifted. He was most remarkable for calm, penetrating, profound wisdom, which is not the quality most important to an advocate ; indeed, it would sometimes stand very much in his way. It is hardly consistent with the fervid eloquence which addresses the minds of men through their passions and feelings ; for this seldom exists without a taint of exaggeration, and a certain facility of understanding, which makes it the slave of the impulses and affections. That pure reason,—that *mens sine affectu*, which is so essential to a great judge, is not, and cannot be combined with that vividness of feeling and susceptibility of organization, which are ingredients so necessary in the composition of an orator or a poet. We cannot have at once the strength of the oak and the flexibility of the willow. The splendid forensic eloquence of Lord Erskine did not prevent his being an indifferent Chancellor. Chief Justice Marshall could no more have spoken Mr. Ames's speech on the British treaty, than Mr. Ames could have pronounced his opinion on the constitutionality of the United States Bank. The bold and commanding features of his mind were inconsistent with that intellectual dexterity, versatility, and power of doing one thing about as well as another, which our English brethren call cleverness. He would have argued a great legal question with irresistible power, and his exalted character would have given to his simplest statement, a force unknown to the passionate exuberance of rhetoric. But in many points of an advocate's duty, he must have been surpassed by men, who, in intellectual stature, were pygmies to him, and his love of truth, no less than his strong moral sense, must have prevented him from manifesting much ardor, where he felt himself to be clearly in the wrong.

Nor could he have reached his present eminence, if he had

devoted himself to the graver departments of literature, in which he would undoubtedly have been eminent. His Life of Washington is remarkable rather for its judicial than its literary merit. It wants the vividness, the eloquence, the glowing narrative, the picturesque sketches, and the lively details, which make a biography attractive and popular ; but it has, to a high degree, those qualities of accuracy, fidelity and truth, which give permanent value to a work. It is not an easy book to read ; nor will it be read by those who read merely for the sake of reading ; but it will be always consulted as the highest authority in the subjects of which it treats, equally correct in details, and just in its general views. It is almost unexampled for its candor and firmness, when we bear in mind that the author is narrating events in which he himself took an important share, and has occasion to make frequent mention both of political friends and foes. Let any one compare it with Clarendon's History of the Rebellion, for instance, and he will be prepared to perceive its superiority in these respects, and to understand how important it is that a historian should be a man of stern moral sense.

It is as a judge and a magistrate, that his claim upon the remembrance of posterity and the gratitude of his country, chiefly rests, and in this capacity he is entitled to rank side by side with the most exalted models of judicial excellence that the world has ever seen ; with Sir Matthew Hale, Lord Mansfield, and Chancellor D'Aguesseau. In looking back upon his long life, so crowded with the efforts and sacrifices of duty, so spotless, so perfect, beaming with so serene a lustre from every point and period, we cannot but think it a cause of national gratitude, that Providence has given us such a man, and crowned him with such store of useful years. That he was one of our fellow-citizens, is a reason for feeling more proud of our country. A nation is twice blessed in such a being. He exerts a great indirect as well as direct influence upon the community. We are accustomed to speak of the inestimable services which Chief Justice Marshall has conferred upon his country, by drawing more closely the bonds of our Union, and by exercising over the various departments of the government that conservative and directing power, which is so essential to the good order and harmony of so complicated a system as ours. And this is just and proper.

But we must not overlook the debt of gratitude, which we owe him for his example, and the effect produced by the daily beauty of his life upon all who approached him. He was a man,

“ Whose powers shed round him in the common strife,
Or mild concerns of ordinary life,
A constant influence, a peculiar grace.”

To converse with him was like beholding virtue in a visible shape ; and no susceptible person could leave his presence without feeling every good resolve strengthened, and every weakness rebuked. He was a memorable instance of a man, who, having been always in public life, contracted no stain upon the whiteness of his soul, and never parted with one jot of his own stern self-respect. Did any one wish to cite an example of one, in whom intellectual greatness was combined with unslumbering devotion to duty, and the healthiest moral sense ; did any father seek to point out to his son, a faultless model to be studied and imitated, and to make him love that light from Heaven, which shines round the good man’s path, the name of Marshall came spontaneously to the mind and the lips. Other conspicuous men had obvious flaws ; their public virtue was easily entreated ; they acted under the influence of the selfish, animal appetites ; they hungered after the loaves and fishes of office, or their private characters were stained with debasing vices, or they neglected the lesser moralities of social life. But here was one, in whose whole nature there was nothing upon which detraction could feed, or over which friendship could seek to cast a mantle of oblivion.

How beautiful is the contemplation of such a life, while passing before our eyes ; how beautiful its recollection, when no longer seen. The memory of such men constitutes neither the smallest nor the least valuable portion of a nation’s wealth. How superior is it to the trophies and banners of a thousand battle fields, and the laurels and cenotaphs of a thousand mere warriors. Through the night of ages, it beams and sheds sweet influences. No generous-hearted Englishman can, at this day, pronounce the name of Alfred, without a throb of mingled gratitude and admiration. The lapse of time but deepens and hallows the feelings, with which the true-souled patriot contemplates such men as these. Short as has

been our own national existence, the page of our history is thickly studded with bright names.

“ Great men have been among us ; hands that penned,
And tongues that uttered wisdom ; better, none.”

The wise, the good, the faithful have toiled and watched and died for us. There is no dreary dearth of men to chill the patriot as he looks back upon the past. If we are insensible, it is not because there are no objects to awaken sensibility. The fault is in our own indifference. It is an ominous sign, when a nation no longer cherishes, with the liveliest fondness, the memory of its great men. When the languid pulse of patriotism shall cease to be animated and quickened by the recollection of such names as Washington, Jay and Marshall, the grave of our prosperity will have been already dug.

ART. X.—*The Anthracite Coal Trade of Pennsylvania.*

1. *Report of the Committee of the Senate of Pennsylvania, upon the Subject of the Coal Trade.* S. J. PARKER, Chairman. *And Appendix of Documents.* Harrisburg. 1834.
2. *Comparative Views of the most important Anthracite Collieries in Pennsylvania ; exhibiting their Avenues to Tide Water ; with an Appendix, Map, and Draught of Comparative Heights and Distances.* Pottsville. 1835.
3. *Report of the President and Managers of the Schuylkill Navigation Company to the Stockholders.* (In Annual Numbers.) Philadelphia.
4. *Report of the Board of Managers of the Lehigh Coal and Navigation Company.* (In annual numbers.) Philadelphia.
5. *Annual Report made by the Board of Trade to the Coal Mining Association of Schuylkill County.* (In annual numbers.) Pottsville.

WE visited, recently, the anthracite coal-mines in the interior of the State of Pennsylvania. The spectacle of enterprise, industry, and prosperity, which we there beheld, was most im-